

**LEGISLATIVE SERVICES AGENCY  
OFFICE OF FISCAL AND MANAGEMENT ANALYSIS**

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**FISCAL IMPACT STATEMENT**

**LS 7248**

**BILL NUMBER:** HB 1531

**NOTE PREPARED:** Jan 19, 2011

**BILL AMENDED:**

**SUBJECT:** Habitual Offenders.

**FIRST AUTHOR:** Rep. Foley

**FIRST SPONSOR:**

**BILL STATUS:** As Introduced

**FUNDS AFFECTED:** ☒ **GENERAL**  
**DEDICATED**  
**FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A. *Habitual Offenders* – It removes language prohibiting the state from seeking to have a person sentenced as either a habitual offender or a habitual substance offender for certain drug-related offenses.
- B. *Repeat Drug Offender* – It provides procedures for a person to be tried and sentenced as a repeat drug offender.
- C. It specifies that a conviction for an attempt to commit or conspiracy to commit certain sex crimes in another jurisdiction may be included for purposes of sentencing a person as a repeat sex offender.

**Effective Date:** July 1, 2011.

**Explanation of State Expenditures:** Added Beds Needed – Case law does not generally permit courts to combine sentence enhancements from different statutory sources for persons convicted of crimes when they have had prior felonies. Consequently, prosecuting attorneys would have to select a specific enhancement shown below for persons who are convicted of a drug felony.

Depending on the choices made by the prosecuting attorney and the sentencing courts, the Department of Correction (DOC) would likely need additional beds in the near future. The following table summarizes the need for new beds based on the analysis in this fiscal note.

<b>Estimated Costs (in \$M) For New Offenders Being Committed As Habitual Offenders</b>
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	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022
Habitual Offenders	\$0.05	\$0.26	\$0.46	\$0.72	\$0.77	\$0.83	\$0.89	\$0.96			
Habitual Substance Offenders	\$0.05	\$0.26	\$0.46	\$0.66	\$0.72	\$0.74	\$0.75	\$0.77			
Repeat Drug Offenders							\$0.11	\$0.23	\$0.34	\$0.46	\$0.57

### Background on Habitual Offenders and Habitual Substance Offenders –

Under current law, if an offender has two prior unrelated felony convictions and is found guilty of a third felony, the prosecuting attorney (i.e., the state) may petition the court to hold a trial to determine whether the person should be sentenced as a habitual offender. There are two exemptions under current law that would be eliminated under the bill (dealing in drugs under certain circumstances and possession of drugs). The following table shows what drug felonies are currently not eligible for enhancement and what is proposed by this bill.

<b>Drug Exceptions for Habitual Offender and Habitual Substance Offender Enhancements</b>		
<b>Offense</b>	<b>Current Law</b>	<b>Proposed</b>
Dealing in drugs <sup>1</sup> if the person possessed a firearm at the time of the offense; delivered or intended to deliver to a person under 18 years of age or at least 3 years junior to the person and either on a school bus or within 1,000 feet of certain sites <sup>2</sup>	No exceptions for inclusion as a prior felony for enhancement	No change
<b>Dealing in drugs<sup>1</sup> without a firearm; to a person older than 18 years; or outside of 1,000 feet of certain sites<sup>2</sup> if to a person younger than 18</b>	<b>One exception. Second felony conviction, however, would be included as prior felony for enhancement</b>	<b>Eligible to be included as prior felony for habitual enhancement</b>
<b>Possession of drugs</b>	<b>Does not count as a felony for enhancement</b>	

<sup>1</sup> Cocaine or a narcotic drug, meth, Schedule I, II, or III controlled substance.  
<sup>2</sup> Certain sites are school property; a public park; a family housing complex; or a youth program center.

The following table shows the enhancements under current law and what is being proposed for persons who are sentenced as repeat drug offenders.

<b>Habitual Enhancements Under Current Law</b>		
<b>Enhancement</b>	<b>Statute</b>	<b>Enhancement</b>
Habitual Offender	IC 35-50-2-8	Between advisory sentence and 3 times advisory sentence
Habitual Substance Offender	IC 35-50-2-10	Between 3 and 8 years
Repeat Drug Offender	proposed	Between the advisory sentence and 10 years

The advisory sentences for the four felony classes are shown in the following table.

Advisory Sentences By Felony Class				
Felony Class	A	B	C	D
Term	30 years	10 years	4 years	1.5 years

Effect on DOC Facilities – LSA uses felony offenders who were committed to DOC in CY 2010 to estimate the added costs to the state prison facilities under both the habitual offender and the habitual substance abuse offender enhancements. LSA found the following offenders who were sentenced for possession with a drug as a third felony and would thus be eligible for this additional enhancement.

Number of Offenders Who Could Receive a Habitual Enhancement Based on CY 2010 Commitments		
Class B	Class C	Class D
1	4	16

LSA estimated the added beds and the associated costs based on the CY 2010 commitments for these felonies and the added offenders that would be placed in jails due to the full capacity in DOC facilities. The added cost per bed is \$35 per day x 365 days per year.

Estimated Costs (in \$M) For New Offenders Being Committed As Habitual Offenders								
	2012	2013	2014	2015	2016	2017	2018	2019
Beds Needed	4	20	36	56	60	65	70	75
Cost per Bed	<u>\$12,775</u>	<u>\$12,775</u>	<u>\$12,775</u>	<u>\$12,775</u>	<u>\$12,775</u>	<u>\$12,775</u>	<u>\$12,775</u>	<u>\$12,775</u>
Annual Cost	\$0.05	\$0.26	\$0.46	\$0.72	\$0.77	\$0.83	\$0.89	\$0.96

The added costs for beds would be slightly smaller if all of these offenders are sentenced as habitual substance offenders.

Estimated Costs (in \$M) For New Offenders Being Committed As Habitual Substance Offenders								
	2012	2013	2014	2015	2016	2017	2018	2019
Beds Needed	4	20	36	52	56	58	59	60
Cost per Bed	<u>\$12,775</u>	<u>\$12,775</u>	<u>\$12,775</u>	<u>\$12,775</u>	<u>\$12,775</u>	<u>\$12,775</u>	<u>\$12,775</u>	<u>\$12,775</u>
Annual Cost	\$0.05	\$0.26	\$0.46	\$0.66	\$0.72	\$0.74	\$0.75	\$0.77

Repeat Drug Offenders – This new habitual enhancement would be for persons convicted of drug manufacturing, dealing, transporting of certain drugs or illegally dumping controlled substance waste (generally from meth labs). The enhancement would be for the advisory sentence for the underlying offense not to exceed 10 years. LSA identified ten offenders who were committed to DOC in CY 2010 for drug dealing with a prior conviction for drug dealing.

<b>Felony Offenders Committed to DOC in CY 2010 for Felony Drug Dealing with a Prior Felony Drug Dealing Conviction</b>	
<u>Felony Class</u>	<u>Number of Felons</u>
Class A	1
Class B	9

If all of these offenders received the enhancement for being a repeat drug offender, the increase in the need for additional beds would not begin until 2018, the Class B offenders would be released from DOC. The need for new beds would reach its peak by 2025.

<b>Estimated Costs (in \$M) For New Offenders Being Committed As Repeat Drug Offenders</b>								
	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021</b>	<b>2022</b>	<b>2023</b>	<b>2024</b>	<b>2025</b>
Beds Needed	9	18	27	36	45	45	45	45
Cost per Bed	\$12,775	\$12,775	\$12,775	\$12,775	\$12,775	\$12,775	\$12,775	\$12,775
Annual Cost	\$0.11	\$0.23	\$0.34	\$0.46	\$0.57	\$0.57	\$0.57	\$0.57

**Explanation of State Revenues:**

**Explanation of Local Expenditures:**

**Explanation of Local Revenues:**

**State Agencies Affected:** Department of Correction.

**Local Agencies Affected:**

**Information Sources:** Department of Correction Offender Information System.

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